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4 DANIEL CISNEROS,  
5 Plaintiff,  
6 v.  
7 J. VANGILDER, et al.,  
8 Defendants.  
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10 Case No. 16-cv-00735-HSG (PR)  
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13 **AMENDED ORDER OF SERVICE**  
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15 The order of service entered on July 8, 2016 is vacated and replaced with the following  
16 order:  
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18 Plaintiff, an inmate at Folsom State Prison, filed this pro se civil rights action under 42  
19 U.S.C. § 1983 against staff at Pelican Bay State Prison (“PBSP”), where he was previously  
20 incarcerated. He has been granted leave to proceed in forma pauperis by separate order. His  
21 complaint is now before the Court for review under 28 U.S.C. § 1915A.  
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23 **DISCUSSION**  
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25 **A. Standard of Review**  
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27 A federal court must conduct a preliminary screening in any case in which a prisoner seeks  
28 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
§ 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims  
that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek  
monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),  
(2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police  
Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988).

29 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
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1 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the  
2 statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon  
3 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although  
4 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s  
5 obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and  
6 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .  
7 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*  
8 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint  
9 must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 1974.

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
11 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
12 the alleged violation was committed by a person acting under the color of state law. *See West v.*  
13 *Atkins*, 487 U.S. 42, 48 (1988).

14 **B. Legal Claims**

15 According to the complaint, on June 4, 2015, PBSP correctional officers Vangilder and  
16 Vasquez were engaging in unprofessional conduct and “horseplaying” with each other, which  
17 caused one of them to drop a grenade that discharged a chemical agent near plaintiff’s cell.  
18 Plaintiff states he began to choke, cough, gag, and experience painful burning in his eyes and  
19 lungs from the chemical agent being dispersed. Plaintiff attempted to obtain medical attention, but  
20 his pleas for help were ignored by Vangilder and Vasquez.

21 Plaintiff also alleges that PBSP supervisory officers Cupp, Cuske, Ohland, and Melton  
22 knew that the expended grenade dispersed painful chemical vapors, that plaintiff had been exposed  
23 to the vapors, that plaintiff had not been decontaminated or given medical attention, that the pod  
24 had not been decontaminated, and that there was no air circulating into the pod. Despite this  
25 knowledge, Cupp, Cuske, Ohland and Melton did nothing to aid plaintiff.

26 Liberally construed, plaintiff’s complaint states a cognizable Eighth Amendment claim for  
27 excessive force as against defendants Vangilder and Vasquez. Plaintiff’s complaint also states  
28 cognizable Eighth Amendment conditions of confinement claims and deliberate indifference to

1 serious medical needs claims as against defendants Vangilder, Vasquez, Cupp, Cuske, Ohland and  
2 Melton.

3 Finally, plaintiff alleges that defendants' actions violated California tort laws against  
4 negligence. The Court has federal supplemental jurisdiction "over all other claims that are so  
5 related to claims in the action within such original jurisdiction that they form part of the same case  
6 or controversy under Article III of the United States Constitution." 28 U.S.C. § 1337(a).  
7 Therefore, the Court will exercise supplemental jurisdiction over the state law negligence claims  
8 pursuant to 28 U.S.C. § 1337.

9 **CONCLUSION**

10 For the reasons stated above, the Court orders as follows:

11 1. Plaintiff's complaint states cognizable Eighth Amendment claims and supplemental  
12 state law claims.

13 2. Defendants have already been served and have appeared through counsel in this  
14 action. The Court will set a dispositive motion briefing schedule by separate order once screening  
15 and service is complete in the three cases that have been related to this action, i.e., *Chaidez v.*  
16 *Vangilder, et al.*, No. C 16-1330 NVJ (PR); *Falla v. Ducart, et al.*, No. C 16-0869 HSG (PR); and  
17 *Manriquez v. Vangilder, et al.*, No. C 16-1320 HSG (PR).

18 **IT IS SO ORDERED.**

19 Dated: 11/3/2016

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HAYWOOD S. GILLIAM, JR.  
United States District Judge